

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KARY JOLSON SMITH,

Petitioner,

No. CIV S-00-0250 GEB JFM P

vs.

G.E. HARRIS, et al.,

Respondents.

ORDER

Petitioner is a state prisoner proceeding through counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 7, 2000, respondent lodged the Clerk's Transcript on Appeal, 2 volumes (entries through February 6, 1996 Notice of Appeal), Reporter's Transcripts on Appeal, Volume I (pages 1-293) and Volume II (pages 294-373), and Reporter's Transcript on Appeal, Volume One (further proceedings held January 13, 1995), and Reporter's Transcript on Appeal, Volume Two (proceedings held on October 5, 1994, November 1, 1994, November 16, 1994, November 23, 1994 and August 21, 1995.)

Certain pages of the Reporter's Transcript on Appeal, Volume Two, are so faint the court cannot discern either the date or nature of the proceedings. Four of these pages follow the initial Declaration Regarding Status of Record and precede the October 5, 1994 proceedings which start with a page number one. The first page of the missing four pages contains a docketing stamp date of August 14, 1996 filed in the California Court of Appeal for the Third

1 Appellate District in No. C022968. In addition, there are 15 faint pages following page 20
2 (proceedings held November 23, 1994). The first page of the 15 pages appears to be dated
3 Friday, January 20, 1996, although the 6 is unclear.

4 Volume II of the Reporter's Transcript covers proceedings through petitioner's
5 initial sentence on January 18, 1996. (RT 326-64.) However, neither the Clerk's Transcript nor
6 the Reporter's Transcript provide documentation of petitioner's re-sentencing after remand by
7 the Court of Appeals on petitioner's direct appeal decided June 16, 1997. (Answer, Ex. B.)¹ The
8 Court of Appeals notes that the trial court held a lengthy hearing following the remand. (Answer,
9 Ex. C at 2.) Because petitioner has raised various challenges concerning his sentence, these
10 records are necessary to complete habeas review.

11 Good cause appearing, respondents will be provided an opportunity to submit
12 these additional portions of the record.

13 IT IS HEREBY ORDERED that within fifteen days from the date of this order,
14 respondents shall re-file those portions of the Reporter's Transcript on Appeal, Volume Two,
15 described above; and shall provide copies of the Clerk's Transcript and Reporter's Transcript on
16 Appeal addressing the trial court's re-sentencing of petitioner following remand by the Court of
17 Appeals, Third Appellate District, on June 16, 1997.

18 DATED: April 3, 2008.

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21 UNITED STATES MAGISTRATE JUDGE

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26 ¹ The Answer does not provide the date on which petitioner was re-sentenced after
remand. (Answer at 6.)